

In order to satisfy this section, there must be a delivery of goods with an attempt to vest right of possession in vendee, and there must be an actual acceptance by latter with intent to take possession. The wording of this section relative to acceptance and receipt is substantially same as 17th section of statute of frauds. Case properly withdrawn from jury. *Worthington v. Lipsitz*, 131 Md. 256.

The furnishing by plaintiff to defendant of some seed and plants for use in producing a crop of tomatoes to be purchased at a price to be specified later is not in compliance with portion of this section requiring something in earnest to bind contract. The terms "earnest" and "part payment" are synonymous and mean something of value given by buyer and accepted by seller on account of purchase price. *Wenger v. Grummel*, 136 Md. 81.

Where there is no earnest money paid on a contract and no note or memorandum in writing, the contract is not binding under this section unless buyer accepts and actually receives at least a part of goods; there may be an acceptance without a receipt and *vice versa*. What amounts to acceptance and receipt. Evidence sufficient to go to jury. *Prayers. Castle v. Swift & Co.*, 132 Md. 633.

A recognition of a contract in one writing or several, even with a request for a release, refusal to perform or denial of validity of contract, is sufficient under this section. *Franklin Sugar Co. v. Egerton*, 288 Fed. (CCA 4th Cir.) 698.

This section referred to in deciding that a party was not obligated to accept or pay for goods because they were not purchased by agent actually authorized to do so or who was held out as having such authority. Scope of authority of "buyer." *Brager v. Levy*, 122 Md. 558.

*Cf. sec. 66.*

An. Code, 1924, sec. 26. 1912, sec. 26. 1910, ch. 346, sec. 23 (p. 273).

**23.** (1) The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this sub-title called "future goods."

(2) There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

(3) Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods.

A contract to make a certain firm a special bottle-making machine is a contract for the sale of "future goods" within meaning of this section and sec. 94, and not contract for work and labor. *Engineering & Machine Co. v. Swindell*, 161 Md. 571.

An. Code, 1924, sec. 27. 1912, sec. 27. 1910, ch. 346, sec. 24 (p. 273).

**24.** (1) There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

(2) In case of fungible goods there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass, as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods, unless a contrary intent appears.

See art. 14A, sec. 23.

An. Code, 1924, sec. 28. 1912, sec. 28. 1910, ch. 346, sec. 25 (p. 274).

**25.** (1) Where the parties purport to sell specific goods, and the goods, without the knowledge of the seller, have wholly perished at the time when the agreement is made, the agreement is void.